

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

United States of America,

Case No. 2:14-cr-00085-APG-DJA

Plaintiff,

**Order**

v.

Kenneth Gordon Wescott,

Defendant.

Before the Court is Defendant Kenneth Gordon Wescott's motion to reinstate court ordered law library access (ECF No. 529) and the United States' motion to dismiss Defendant's motion (ECF No. 531). In his motion, Defendant explains that he has been transferred to a new facility in Berlin, New Hampshire: the Federal Correctional Institution, Berlin (FCI Berlin). (ECF No. 529). He moves the Court to order FCI Berlin to reinstate Defendant's prior Court-ordered law library access. (*Id.*). Defendant asserts that the lieutenant at FCI Berlin has not responded to his request to access the law library. (*Id.*). The United States moves to dismiss Defendant's claim, explaining that, when the Court originally ordered law-library access, Defendant was housed in Nevada. (ECF No. 531). Now that Defendant is challenging the conditions of his confinement in New Hampshire, the United States asserts that Defendant must bring his claim there, not in this Court. (*Id.*). Defendant did not respond to the United States' motion.

In the Ninth Circuit, when a prisoner is challenging the conditions of his confinement and his challenge will not necessarily shorten his sentence, a civil action under 42 U.S.C. § 1983 is the proper method for redress. *See Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003); *see Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). However, the federal venue statute requires that a civil action be brought in "(1) a judicial district in which any defendant resides, if all defendants

1 are residents of the State in which the district is located; (2) a judicial district in which a  
2 substantial part of the events or omissions giving rise to the claim occurred...; or (3) if there is no  
3 district in which an action may otherwise be brought as provided in this section, any judicial  
4 district in which any defendant is subject to the court's personal jurisdiction with respect to such  
5 action." 28 U.S.C. § 1391(b).

6 The Court denies Defendant's motion to reinstate his law library access and grants the  
7 United States' motion to dismiss Defendant's motion. Defendant's motion—challenging the  
8 conditions of his confinement in New Hampshire—must be brought as a new civil action under  
9 42 U.S.C. § 1983, not filed into his existing criminal case. Defendant must also bring his action  
10 in the District of New Hampshire—rather than the District of Nevada—because that is where FCI  
11 Berlin is located and where the events he describes took place.

12  
13 **IT IS THEREFORE ORDERED** that Defendant's motion to reinstate his law library  
14 access (ECF No. 529) is **denied with prejudice**.

15 **IT IS FURTHER ORDERED** that the United States' motion to dismiss Defendant's  
16 motion (ECF No. 531) is **granted**.

17  
18 DATED: August 19, 2022

19   
20 \_\_\_\_\_  
21 DANIEL J. ALBRECHTS  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28